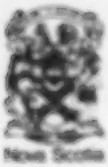

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ANNUAL REPORT

for the year ending
December 31, 1990

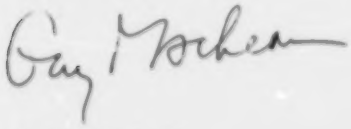
Ombudsman

Hon. Ronald Russell, C.D.
Speaker
The Legislative Assembly
Province of Nova Scotia

Mr. Speaker:

I have the honour to submit the report of the Ombudsman for the year ending December 31, 1990.

Respectfully submitted,



Guy R. MacLean
Ombudsman

92-01072/

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INTRODUCTION

The office of Ombudsman was established in Nova Scotia in 1971 for the purpose of protecting the rights of citizens in their dealings with government.

A person who has a complaint against a department, agency, or official of the provincial or municipal administration may contact the Ombudsman and expect to receive a fair and impartial hearing.

If the Ombudsman concludes after investigation that the complaint is justified, he or she will recommend to the responsible authorities that appropriate remedial action be taken.

In order to perform this function, the Ombudsman has broad statutory powers to obtain all information relating to a complaint, including access to government files.

The Ombudsman is independent from the executive branch of government and reports directly to the Legislature.

The jurisdiction of the Ombudsman does not extend to decisions of the Cabinet, courts of law, federal government, or private companies. However, our office can often be helpful even if a matter lies outside our mandate.

NATIONAL CONFERENCE

The annual Conference of Canadian Ombudsmen was held in Halifax from September 19 to September 21, 1990. Participants included representatives from the Ombudsman offices of nine Canadian provinces, Barbados, Iowa and Ohio, the Commission of Official Languages, the Canadian Human Rights Commission, the Information Commission of Canada, the Privacy Commission of Canada, the Office of Correctional Investigator, the RCMP Public Complaints Commission, the Ombudsman Committee of the Alberta Legislature, the Public Complaints Commission of Ontario, the Hydro Complaints Commission of Quebec, the Human Rights Commission of Nova Scotia, the Nova Scotia Office of Public Prosecutions, the Nova Scotia Advisory Council on the Status of Women, and the Atlantic Regional Office of the Canadian Human Rights Commission.

The Hon. Lloyd R. Crouse, P.C., Lieutenant-Governor of Nova Scotia, officially opened proceedings at the first plenary session and later that evening Mrs. Marie Dechman, Deputy Speaker of the House of Assembly, welcomed delegates and guests at an informal reception and dinner. The Hon. Thomas McInnis addressed a luncheon meeting on the first day, and Dr. Gerald J. McCarthy represented the Premier and spoke at the closing banquet.

The annual conference provides an opportunity for ombudsmen from different jurisdictions to meet and discuss problems of common concern and current interest. Plenary sessions this year were devoted to the following issues: native rights, with particular reference to recent events in Quebec; the role of Canada in promoting the ombudsman concept in developing countries; the ombudsman's role in protection of the environment; public complaints against the police; and the moral and legal implications of "whistle-blowing" within the bureaucracy. A highlight of the conference was an address by Dr. Donald Rowat who offered reflections on the past, present, and future of the ombudsman concept throughout the world.

The agenda of the annual business meeting related to a number of matters, the most important of which concerned events at Oka in the Province of Quebec. Ombudsmen unanimously endorsed a resolution calling upon the federal government "to establish, in cooperation with representatives of the aboriginal peoples, a parliamentary commission to assist all parties involved in issues regarding the aboriginal peoples to identify, clarify, facilitate and resolve issues and disputes, and, where appropriate, to investigate complaints and issues and make written reports to Parliament." Copies of this resolution were sent to the Prime Minister, premiers of the provinces, representatives of the aboriginal peoples, and leaders of the opposition in all legislatures.

We wish to acknowledge the exceptional professional assistance provided by the Office of Protocol, in particular Mrs. Marilyn Atkinson, Chief of Protocol, Ms. Geraldine May, and Ms. Florence Sassine, who contributed greatly to the success of the meetings. We wish also to acknowledge the support of the Hon. Arthur Donahoe, Speaker of the House of Assembly, the staff of Hansard, Mr. Michael Laffin and staff of Province House, and Mr. David Flemming and staff at the Maritime Museum of the Atlantic. We are also most grateful for the financial support provided by the Hon. Kim Campbell and the Project Development Section of the Department of Justice in Ottawa.

INTERN PROGRAM

We were fortunate to be assigned a student intern for the third consecutive year under the co-op program of the Civil Service Commission. Ms. Rosemary Landry, a student in Public Administration at Dalhousie University, worked with us during the summer months when she completed a major research project and dealt effectively with a significant number of complaints.

COMPLAINTS 1990

In the year ended December 31, 1990, the office of Ombudsman received 1,700 complaints and enquiries from individuals seeking assistance in problems with provincial and municipal governments.

This represents an increase of 20 per cent over the previous year and is the largest number recorded in any year since the office was established.

We are not aware of any particular explanation for the increase except to suggest that it may reflect anxiety associated with the economic recession.

Table II shows that the number of complaints originating in the Halifax–Dartmouth metropolitan region accounted for most of the increase.

The total number of cases in each year from 1971 to 1990 will be found in Table I.

DISPOSITION OF COMPLAINTS

Many complaints do not require extensive investigation as matters can often be resolved simply by phone calls to the department concerned. These account for 45 per cent of the cases dealt with in 1990 and are merely recorded as "assistance rendered."

We concluded after investigation that 16 per cent of the complaints were not substantiated.

We declined or discontinued investigations in 8 per cent of the complaints (for example, when an alternative means of remedy was available).

Investigations were discontinued by the complainant in 13 per cent of cases, often as a result of information or advice provided by this office.

Where we concluded that a complaint was justified and required remedial action, matters were resolved satisfactorily in all except five cases. Four of these related to municipal administration and one concerned an agency of the provincial government.

At the end of the year, there were 58 complaints still under investigation.

DEPARTMENTAL COMPLAINTS

A summary of complaints and enquiries relating to particular departments appears in Table III.

The pattern has changed little in the period from 1986 to 1990. The largest number of complaints concerned the Workers' Compensation Board, the Department of Community Services, and the Department of Transportation and Communications.

One should not attach too much significance to these figures, nor assume that administrative problems exist within a particular department. A relatively large number of complaints may merely reflect the size of the department and the large number of individuals directly affected by decisions made by the department. For example, we receive a substantial number of complaints relating to the Department of Community Services, one of the largest administrative units in the province, where officials deal with hundreds of clients daily in highly stressful situations. We find that most complaints against this department are not substantiated. In the few cases where it was demonstrated that an injustice might have occurred, officials were quick to acknowledge the fact and took immediate action to remedy the situation. We are pleased that this department looks upon our office, not as an adversary, but as an additional mechanism to ensure that individuals are treated fairly and with compassion.

EXAMPLES OF CASES

The following case summaries illustrate the variety of complaints processed during 1990. Since the Ombudsman Act requires confidentiality with respect to investigations, the descriptions have been generalized and names excluded in order to protect the privacy of the individuals concerned.

82–22

An elderly woman had lived in the same house for nearly 50 years before the town council re-zoned her neighbourhood to permit commercial activity. Over the years she had created a pleasing landscape of trees, shrubs, and flowers, and was distressed when an industrial enterprise moved in next door. She was particularly upset that a full-grown hedge that had effectively screened her garden would be ruined by the constant coming and going of heavy machinery. Town officials acknowledged that this was a possibility and built a retaining wall between the two properties.

Unfortunately, town engineers did not calculate that the wall should run the complete length of the property line. Within a few months it was obvious that the unprotected portion of the hedge would be destroyed unless the wall was extended to the street. When the woman approached town officials about the problem, they said that they were not prepared to do any more work because they would then be swamped with similar requests from other citizens.

We pointed out that the woman deserved better treatment because the town had created the problem by re-zoning the area in the first place and then failed to ensure that the retaining wall was adequate. We found their attitude puzzling because the works department had just recently built another retaining wall across the front of her property while installing a sidewalk. We were not able to persuade town officials to change their minds and reluctantly advised the woman that the only alternative in this case seemed to be legal action against the company causing the damage.

16–4

A man contacted our office because the Department of Community Services had refused to issue his disability pension cheque. He could not understand this because he had received a notice from the Appeal Board of the department confirming that his disability claim had been approved and that he was eligible for a pension. When we looked into the matter, we discovered that there was a typographical error in the notice which the department had received from the Appeal Board. The department acknowledged the mistake and issued a cheque immediately.

113–1

A woman who had worked in a provincial agency on a seasonal basis for eight consecutive years was surprised to find that someone else had been hired for the 1990 season. She was given no explanation, but suspected that she was being discriminated against for purely personal reasons (her ex-husband was in charge of hiring staff). We explained to the complainant that we could only examine the general hiring practices of the agency, and that her allegation of wrongful dismissal would have to be referred to the Department of Labour.

When we met with officials of the agency to discuss their hiring policy, we found that they had never prepared job descriptions, nor had they ever advertised vacancies. The process was entirely arbitrary and open to charges of discrimination. We recommended that in the future they prepare job descriptions, advertise positions, interview candidates, and hire those who were best qualified. They accepted our recommendations and indicated that this new policy would be in place for the 1991 season.

122–1

A woman who lived in a rural community with her invalid husband and two small children was determined to avoid becoming completely dependent on social assistance from the municipality. She was partially disabled herself, but believed that she could generate a modest income by making craft products for sale in gift shops nearby. She was encouraged in this undertaking by representatives of the Department of Small Business Development who told her that she was eligible for

assistance under the Disabled Entrepreneur's Program and could receive as much as 75 per cent of her initial costs. When she had developed her business plan and arranged financing with the local bank, she submitted a formal request for assistance to the department. She was told that there had been a change of policy and that she now qualified for only 50 per cent of her costs. The amount was small but it effectively wiped out her margin of profit. Disappointed, but determined to go ahead as planned, she borrowed more money from the bank and set up business. At the same time she asked us to intervene with the department. The Deputy Minister reviewed the case, acknowledged that the circumstances were exceptional and that she deserved support, and approved a grant on the original terms.

76-9

A school teacher, employed in another province during the winter months, was dismayed to find that the assessment on her summer home in Nova Scotia had jumped from $51,000 to $86,000 in one year. When she filed for appeal, she was told by municipal officials that she had missed the deadline. She argued that municipal officials were at fault because she had not received her tax bill in time to meet the deadline. We contacted the Department of Municipal Affairs on her behalf. An assessor visited the property and agreed that the new assessment was much too high. The woman was advised to apply to a regional court for the right to appeal her assessment and was assured that regardless of the outcome of the hearing, the Assessment Division of the Department of Municipal Affairs would make a correction under a section of the Assessment Act relating to "gross and manifest error."

64-9

In 1974 a large number of rare and endangered ecosystems in Nova Scotia were identified for preservation in future ecological reserves. Many of the sites were virgin forests containing trees over 350 years old and considered especially vulnerable to exploitation by commercial logging operations. Recognizing the danger, the Department of Lands and Forests undertook to protect these areas until they could be formally designated as reserves administered by the Nova Scotia Museum under the Special Places Protection Act.

In August 1990, some members of the Ecology Action Centre in Halifax were shocked to read reports that several of these forest sites had been completely destroyed by clear-cutting. They assumed that this could only have occurred with the knowledge of personnel in the Department of Lands and Forests, and they suggested that if this were true, it represented "a major corruption of public trusts." They asked us to investigate. An examination of departmental records confirmed that several forest sites had indeed been clear-cut, but that the department was not to blame. The trees on one site had fallen in high winds and the cutting which took place later was merely part of a salvage operation. In another case, the Deputy Minister had exercised reasonable discretion when he found a superior alternative site for a reserve before giving permission to cut in the area recommended originally. Another site had been leased to private operators and was cut before the department was informed that it had been identified for reserve status. Finally, two sites which had been reported as clear cut were found to be undisturbed and still intact. We concluded that the accusations of negligence on the part of the department were not supported by the evidence.

In the course of our inquiry, however, we became aware of a much larger problem. We found that few of the sites identified for preservation had actually been established as reserves under the Special Places Protection Act. The Province has not acquired a single site located on private property and only two areas on Crown land have been proclaimed as protected areas. More than 30 sites are still not marked, and there is a real danger that several of these will be seriously damaged by commercial development, forestry operations, or recreational activity unless the ecological reserve program is assigned a higher priority and allocated adequate staff resources. In the meantime, an irreplaceable natural resource remains at risk.

6-2

A taxi driver who had been subpoenaed to testify in a court case showed up on the appointed day and was directed by the receptionist to wait until the case was called. After two hours had passed, he became impatient and asked how much longer he might have to wait. It was only then that he learned that the hearing had been postponed and that staff at the court house had failed to notify him beforehand. As a result he had lost fares for a whole morning.

When we enquired on his behalf, officials in the Attorney General's office explained that court house staff had tried to contact the man by telephone without success, and that the receptionist on duty was inexperienced. They apologized for the inconvenience and assured the man that it would not happen again. That seemed to be the end of the matter.

Six weeks later we received a phone call from the same taxi driver. He was furious. It had happened again. He had shown up at the court house for the second time, only to be told that the case had been dismissed. Again he had not been told in advance. This time we referred his complaint to the Director of Public Prosecutions, who undertook to review procedures with court house staff and later reported to us that a new system was being put in place to ensure that, in future, witnesses would be properly notified of changes in schedules. He also arranged for a modest ex gratia payment to the taxi driver in acknowledgement of the fact that he had suffered loss of income.

50-26

A mother lodged a complaint with our office regarding the way in which the Department of Health and Fitness had dealt with a promise of financial assistance for her son, a student at the British Columbia Institute of Technology.

She said that her son had been interviewed by two officials in a regional office of the department during the summer and had been assured that if he were admitted to a public health inspector program, and undertook to work in the department for two years following graduation, he would be sponsored by the department and receive financial assistance to cover air fare, academic fees, and living expenses. He was told that formal approval of his application would take some weeks, but that he could expect to receive his first cheque by mid-October. On the basis of their assurances, he borrowed money to pay his initial expenses and enrolled at the Institute in September.

When he had still not heard anything from the department by mid-November, he became worried that he might have to withdraw from the course and return home. At that point his mother contacted officials in the local office and was told that her son's file was "just sitting on someone's desk in Halifax." However, when she made phone calls to the

department in Halifax, she could not find anyone who would tell her what had happened to her son's application.

Finally, in December, she turned to us for help. We contacted the department and asked if they would look into the case as a matter of urgency. Within a few days the Deputy Minister advised us that the circumstances surrounding the case had been reviewed and that it had been decided that the young man should be sponsored by the department. The matter was resolved to the satisfaction of all concerned.

80–4

A nurse was told that she had not been hired because a letter of reference from her previous employer was so negative. She suspected that she was being victimized by an administrator at another hospital who had been critical of her work. She asked us to make enquiries on her behalf. We did so and found that she had good reason to be suspicious. Other administrators at the hospital confirmed that she had been an excellent supervisory nurse but that the official letter of reference had been written by a person who seemed to hold a personal grudge against her. They agreed that she was entitled to a positive reference, promised to correct the information in her personal file, and assured us that they would provide a supportive letter of reference in the future.

TABLES

Table I Total Number of Requests for Assistance 1971–1990

Table II Origin of Complaints 1971–1990

Table III Classification of Complaints and Enquiries by Department 1986–1990

TABLE I. TOTAL NUMBER OF REQUESTS FOR ASSISTANCE, 1971–1990

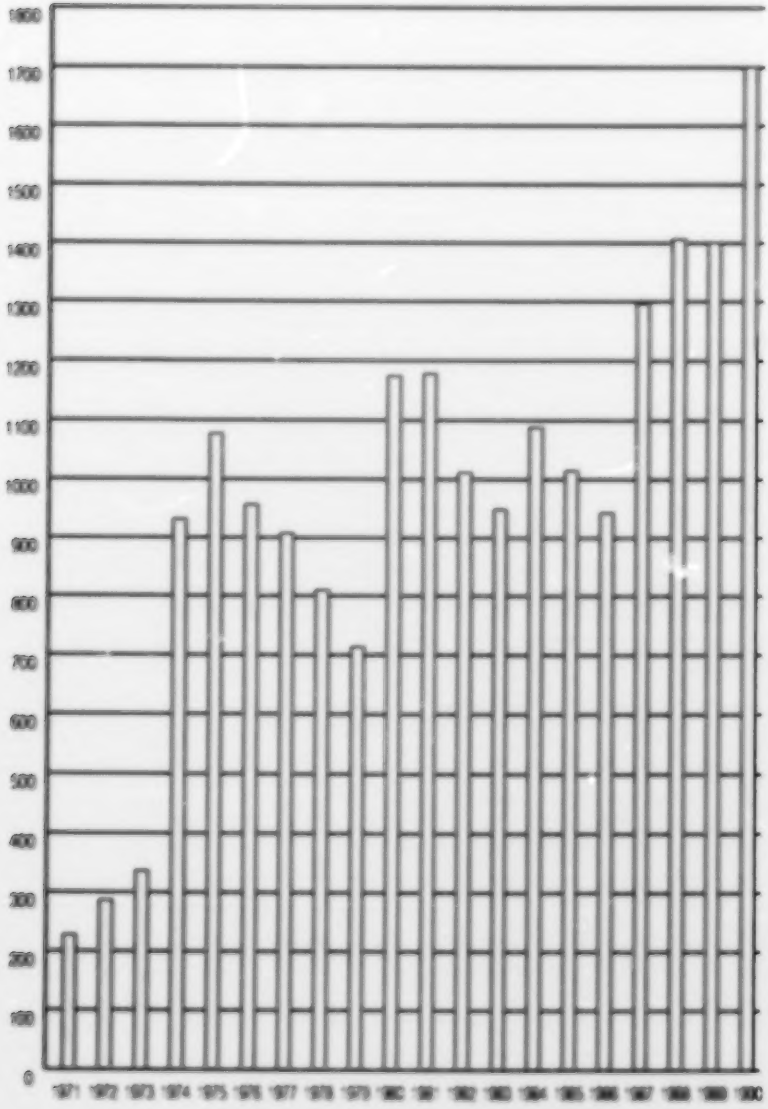

TABLE II. ORIGIN OF COMPLAINTS — 1971–1990

	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Annapolis	16	11	13	19	16	12	18	10	12	8	20	9	18	12	12	18	14	8	16	14
Antigonish	5	8	5	10	10	7	7	9	6	5	20	19	11	24	13	2	8	9	8	18
Cape Breton	41	52	44	68	95	97	68	65	73	86	57	70	48	87	43	33	74	49	66	151
Colchester	8	18	11	34	37	24	26	21	12	25	14	41	35	26	30	18	22	28	26	49
Cumberland	14	16	12	25	34	15	14	24	14	15	14	25	33	28	33	12	31	19	33	39
Digby	8	7	6	16	14	18	12	7	13	8	11	9	15	14	9	7	8	13	13	19
Guysborough	6	10	4	7	25	13	8	10	7	3	8	9	9	6	9	11	11	10	15	13
Halifax	56	80	148	478	637	599	548	504	434	328	278	322	297	318	206	198	251	259	260	501
Hants	7	3	10	23	21	25	37	22	23	23	12	15	21	15	15	19	14	23	17	29
Inverness	6	11	3	4	8	8	10	11	4	12	7	20	20	16	23	4	26	10	10	20
Kings	12	16	10	35	29	15	28	26	21	18	23	26	8	29	35	12	16	20	29	29
Lunenburg	9	12	17	62	50	33	40	23	27	29	14	39	28	42	45	27	25	23	44	61
Pictou	9	13	13	51	24	27	22	15	15	17	39	29	38	26	31	21	43	31	29	32
Queens	3	3	4	9	7	12	10	9	11	9	8	16	18	20	14	15	11	8	11	7
Richmond	1	7	4	1	9	2	11	9	9	7	7	9	12	8	15	6	12	7	9	22
Shelburne	9	8	11	30	18	13	11	10	12	19	7	18	20	21	17	11	12	10	15	6
Victoria	2	5	5	21	1	1	2	6	2	1	2	3	3	6	2	2	5	3	3	3
Yarmouth	6	2	7	32	16	9	11	12	5	17	6	20	16	14	23	9	12	11	8	33
Out-of-Province	9	15	8	21	25	26	24	16	13	22	24	13	16	19	16	10	24	25	17	27

NOTE: The geographic origin is not recorded in all cases.

TABLE III. CLASSIFICATION OF COMPLAINTS /ENQUIRIES BY DEPARTMENT — 1986–1990

	1986	1987	1988	1989	1990
Provincial					
Advanced Education & Job Training	1	5	8	11	18
Agriculture & Marketing	3	5	1	1	1
Attorney General	11	15	16	15	28
Children's Aid Societies		9	6	7	15
Civil Service Commission	2		4	1	4
Community Services**	45	56	54	43	66
Consumer Affairs	11	18	7	16	31
Courts of Law	17	33	25	22	36
Crown Corporations	1	1	1	1	
Drug Dependency	2	3		1	6
Education	9	11	9	9	15
Emergency Measures Organization	1				1
Environment	3	3	4	5	8
Finance	7	6	5	8	19
Fisheries	1	2	1	1	1
Government Services			1		4
Health & Fitness	9	4	8	10	26
Health Services Insurance	4	4		3	3
Horse Racing Commission			1		
Housing	8	9	12	14	20
Human Rights Commission	1	2	2	1	7
Industry Trade & Technology***	3	1		1	
Labour	4	7	7	10	17
Lands & Forests	5	4	9	17	14
Legal Aid	4	3	1	7	16
Legislative Assembly, Members of				2	7
Liquor Commission	1	1		5	9
Liquor License Board	2				1
Management Board					1
Mines & Energy	1	3	1	1	1
Municipal Affairs	1	1	2	1	10
Municipal Board				1	

	1986	1987	1988	1989	1990
Provincial					
Nova Scotia Power Corporation	9	11	11	16	30
Police Commission	1	1			
Province House Credit Union					1
Provincial Grain Commission					1
Provincial Hospitals	7	15	13	12	22
Public Utilities Board		1	3	2	7
Purchasing Agency, N.S.	1				1
School Boards	4	12	11	13	17
Securities, Registrar of				5	11
Senior Citizens Secretariat					1
Small Business Development			1	3	9
Solicitor General				13	33
Sport & Recreation Commission					1
Tourism & Culture****	4	5	1	2	7
Transportation & Communications	26	42	43	38	46
Workers' Compensation Board	27	39	76	63	104
Workers' Compensation Appeal Board	3	4	3	1	6
Other			2	1	6

* Formerly Department of Vocational and Technical Training

** Formerly Department of Social Services

*** Formerly Department of Development

**** Formerly Department of Culture, Recreation and Fitness

	1986	1987	1988	1989	1990
Federal					
Employment & Immigration	8	9	14	3	43
Fisheries	2	6	1	2	5
Health & Welfare	9	12	10	13	35
National Defense	2	3	2	4	10
Revenue Canada	4	5	2	2	12
RCMP					9
Other	18	36	19	22	58
Municipal					
General	21	24	9	12	31
Housing Authorities		7	10	6	10
Planning & Development	11	17	20	25	25
Police	5	6	4	6	21
Social Services	38	32	37	57	98
Taxation	4	4	4	5	8
Works & Engineering	4	7	8	10	7
Private					
Consumer	6	12	15	10	77
Insurance Companies	4	13	4	8	60
Landlord/Tenant	5	3	4	5	26
Legal	11	15	2	7	61
Property Disputes	9	7	9	1	8
Social Problems	6	5	6	4	19
Other	29	61	37	44	235

APPENDIX A

NATIONAL CONFERENCE OF CANADIAN OMBUDSMEN
HALIFAX, SEPTEMBER 19–21, 1990

Program

Wednesday, September 19, 1990

Registration of delegates.

Thursday, September 20, 1990

Official Opening (Red Chamber, Province House):

The Honourable Lloyd R. Crouse, P.C.
Lieutenant Governor of Nova Scotia

FIRST PLENARY SESSION

Topic:	Native Issues After Oka
Speakers:	Mr. Daniel Jacoby Protecteur du Citoyen, Québec
	Dr. Roberta Jamieson Ombudsman, Ontario

SECOND PLENARY SESSION

Topic:	The Ombudsman Concept — World View
Chair:	Dr. Bridglal Pachai Executive Director Human Rights Commission Nova Scotia
Speakers:	Mr. Stephen Owen Ombudsman, British Columbia
	Dr. D'Iberville Fortier Commissioner of Official Languages, Ottawa

Luncheon.

Speaker: The Hon. Thomas J. McInnis
Attorney General Of Nova Scotia

Executive Meeting.

Reception and Dinner hosted by Mrs. Marie Dechman, Deputy Speaker of the Nova Scotia House of Assembly.

Friday, September 21, 1990

THIRD PLENARY SESSION

Topic: Ombudsmen and the Environment

Chair: Mr. Louis Comeau
President, Nova Scotia
Power Corporation

Speakers: Dr. Robert Fournier
Associate Vice-President
Dalhousie University

Ms. Lucie Lavoie
Bureau de Protecteur du Citoyen, Québec

FOURTH PLENARY SESSION

Topic: "Whistle Blowers" —
Responsible to Whom?

Chair: Ms. Sheri Gaetz
Chair, Advisory Council on the Status of Women
Nova Scotia

Speakers: Dr. John Grace
Information Commissioner, Ottawa

Mr. Harley Johnson
Ombudsman, Alberta

Luncheon and Tour, Maritime Museum of the Atlantic.

FIFTH PLENARY SESSION

Topic: The Police and Public Complaints

Chair: Mr. John Pearson
Director of Public Prosecutions, Nova Scotia

Speakers: Mr. Clare Lewis
Public Complaints Commissioner, Ontario

Mr. Fernand Simard
Vice-Chairman, R.C.M.P.
Public Complaints Commission

SIXTH PLENARY SESSION

Topic: Reflections of the Ombudsman Concept

Speaker: Dr. Donald C. Rowat
Carleton University

Reception and Dinner hosted by Dr. Gerald J. McCarthy, Chairman of the Council on Higher Education.

APPENDIX B

REFLECTIONS ON THE OMBUDSMAN CONCEPT

Donald C. Rowat

I will begin by considering the essential features of the ombudsman institution. In my view it has three essential characteristics that distinguish it from other similar types of complaint agencies. The first of these is that it is not part of the executive side of government. Its independence is ensured by being made an agency of the legislature. That is why the Ombudsman is called the Parliamentary Commissioner in jurisdictions where some term other than Ombudsman is used.

The second essential characteristic is that the office receives complaints direct from the public. This needs to be stressed because there are two important national complaint schemes, those in Britain and France, that require complaints to go first to members of Parliament before they can be referred to the complaint agency. This has turned out to be almost disastrous in Britain. It has resulted in a small office that receives very few complaints. The "mediator" in France has got around this problem by what he calls urgent complaints. If a complaint comes directly to him that is an urgent one, he gets the members of the legislature representing the complainant's consitutency to certify that he has referred the complaint to the mediator. It is an ingenious way of short-circuiting the cumbersome requirement that all complaints must at first go to a member of the legislature, and a large proportion of the complaints that he handles now fall into this category of urgent complaints.

The third essential characteristic of the office, and the one which I would say is its most important distinguishing feature, is that, unlike the

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Dr. Rowat has taught political science at Carleton University in Ottawa since 1950 and has been visiting professor at the University of California (Berkely) and the University of Leningrad. He is the author of more than a dozen books, including *The Ombudsman: Citizen's Defender* which was first published 25 years ago, and has contributed significantly to the development of the ombudsman concept throughout the world. This paper was presented at the National Conference of Canadian Ombudsman, Halifax, Nova Scotia, September 21, 1990.

courts, the ombudsman's office cannot make a binding decision. It does not have the power to stop administrative action — to quash or change a decision, or to substitute its judgment for that of the expert administrators. All it can do is make a recommendation to the responsible authorities. But it has the powerful weapon of publicity. Its conclusions and recommendations on important cases will be reported in the press, and are made public in its annual report to the legislature.

The result is that the office is a fence along the administrative road rather than a gate to cross it, as the courts are at times, because the ombudsman simply guides the administration and does not try to substitute his or her judgment for the judgment of the officials who are specialists in their subject. The ombudsman is more a specialist on fair administrative procedure than on the content of the decisions, to ensure that decisions are made fairly and without too much delay.

In summary, then, the combination of these three essential characteristics of the office — its independence, its ability to receive complaints directly about any administrative matter, and its inability to make binding decisions — makes the ombudsman a unique institution. This is the reason for its remarkable spread throughout the world in recent years. A brief account of this spread will be my second theme.

The office originated in Sweden, where it was created in 1809, but it did not begin spreading to other countries until the 20th century. An interesting feature of the original office is that the main function of the ombudsman was to review decisions made by the courts, because in those days government administration did not amount to very much. It was not until the rise of the administrative state in the 20th century that the Swedish ombudsman's supervision of administrative decisions became important. The institution spread to Finland in 1919 when Finland became independent from Russia, but it wasn't until after the end of the second world war that the other Scandinavian countries became interested. It then spread to Denmark in 1955. The next country to adopt a version of the institution was West Germany, which in 1959 created a military ombudsman to receive complaints from the armed forces or their relatives. Then Norway and New Zealand adopted a version of the Swedish institution in the same year, 1962. New Zealand was the first Commonwealth country to adopt the office. Its successful adoption there put an end to the early arguments that it wasn't compatible with parliamentary system of government, or would not work in English-speaking countries. By 1967 the ombudsman idea had become so popular in the English-speaking world that there were three adoptions of

the plan in the same year, two of which were in Canadian provinces, New Brunswick and Alberta. The third was in Great Britain, but the requirement that complaints must go first to members of Parliament resulted in what I call a truncated version of the original ombudsman plan. The next big democracy to adopt the scheme was France in 1973, but its scheme too was a truncated, though more successful, version.

A country in which the concept became really popular was the United States. By the late 1960s a national plan had been proposed, ombudsmen had been adopted for local government, some state governors had appointed executive ombudsmen, and about half of the state legislatures had bills before them to introduce a version of the institution. But only four states (plus Puerto Rico) actually succeeded in adopting the original version, and then the movement in the United States began to peter out. The reasons are a bit of a puzzle. I think the main reason is that members of the legislatures in the United States are more independent and have more power than members in parliamentary countries. They fear that an ombudsman will short-circuit their relationships with their constituents. Yet this does not seem to have happened in the states that have adopted the scheme. Now the ombudsman concept is enjoying a revival in the U.S. The Administrative Conference of the United States, a body that monitors federal administrative agencies, had a study prepared on the concept and last spring passed a resolution in favour of the idea.

The developing countries also took up the idea at an early date. By now there are 12 that have a national ombudsman. And a national scheme has been proposed for India, the most populous democracy among the developing countries. A new proposal is now before the Indian Parliament and 11 of India's 27 states, including the two most populous ones, now have ombudsmen. I was lucky enough to be able to go to India a few years ago to study the first four state offices. I found they worked with considerable success despite the gigantic proportions of the poor and uneducated populations that they had to deal with. To us the size of the populations in these states is almost unbelievable. They are easily the most populous ombudsman jurisdictions in the world. The main mistake made by supporters of the ombudsman in India has been to distort the original scheme with the laudable intention of preventing corruption, especially among politicians. This has resulted in formal procedures that discourage complaints, but the scheme was never intended as a cure for major political corruption. Instead, its main objective is to find a remedy for minor individual complaints. In other

words, it cannot be used as a blunderbuss to capture elephants, but it can certainly swat a multitude of flies.

A more recent spread of the ombudsman plan has been in Europe. There it was adopted at an early date in Switzerland for the city of Zurich in 1971 and then for the state of Zurich in 1977. Meanwhile a version had been adopted in 1974 in a state of West Germany, Rhineland-Palatinate. In 1977 Austria adopted a scheme at the federal level, which seven of its states have since joined. Also, a number of Italy's regions have adopted the plan. When the new democracies were instituted in Portugal and Spain, a national ombudsman scheme was part of their constitutions and implemented soon thereafter. In Spain, schemes were later instituted in five regions. More recently, the new regimes in Eastern Europe have taken a keen interest in the ombudsman plan and versions of it have been created in Poland and Hungary.

Statistics that I have compiled from information collected by the International Ombudsman Institute show that by 1983 there were ninety general legislative ombudsman offices in 35 countries. Of the 90, 25 were national, 44 were provincial, state or regional, and 21 were at the county or city level of government. A large proportion of the local ones were in the United States, so even though not many states adopted the plan, a considerable number of municipalities did. In the U.S. it also became very popular as a specialized office for universities, hospitals, schools and other organizations. So the movement did not die there; it simply became diluted and rode off in all directions, if I may be permitted to mix my metaphors. Regarding the spread of the ombudsman plan among the relatively decentralized federations, it is interesting that only Australia and Austria have a general national institution. The United States and India have not yet instituted the plan at the national level. So we are not alone in this respect.

Now let me move on to my third theme, which is: why is the office needed? I have already provided part of the answer by describing its nature: its uniqueness means that it fills a gap left by other appeal bodies such as the courts. More generally, the reason it is needed has been the growth of the welfare state in the 20th century, particularly the rise of the so-called administrative state after the second world war, when there developed very close contacts between administrators and the public in the form of economic regulations, welfare measures, pension plans, unemployment insurance, and so on. Connected with this is the growing power of the executive, particularly in parliamentary systems, the explosive growth of the administrative side of government, and the

accompanying delegation to officials of the power to make decisions affecting the lives of citizens.

The other side of that coin is that the traditional methods of administrative appeal failed to meet this new challenge, particularly in the common-law countries. Here the traditional ways of handling complaints are through members of the legislature, airing them in the press, or taking one's case to the courts. All of these ways have serious inadequacies.

Regarding complaints to legislative members, the main problem is that the administrative side of government is far too big in relation to the total number of members. They cannot possibly handle all of the potential complaints against the administration in our gigantic democracies. Also they are all members of political parties, and so may be suspected of being partisan. They are expected to devote a lot of their time to policy-making and to become experts on legislative matters, and therefore do not have the time that is needed to investigate minor administrative complaints. Another problem in parliamentary systems is that the majority of members, who support the government, hesitate to complain against their own government. And a minister is very likely to favour a decision made by one of his own officials, even if made by a relatively junior one within his department. A related problem is administrative secrecy. Members of a legislature are often unable to get at relevant information about why a decision was made. This is why, in jurisdictions fortunate enough to have an Access to Information Act, even members of the legislature may have to resort to using it.

If we look at the press as a device for airing complaints, there has been an interesting development in recent years — the newspaper ombudsman. I remember tracing this development in Australia as well as Canada and the United States. Newspapers have instituted what are often called "Action Line" columns, which receive complaints from the public, try to settle them, and then recount the most interesting cases in the column. All of you have no doubt seen such columns, but you may not know that huge newspapers in large cities often receive a very large number of complaints and maintain a big staff who handle and settle them without them ever appearing in the newspaper. Because newspapers blanket the country, action line columns are a very important agency for settling administrative complaints. But there are problems connected with them. One is that they deal with any kind of complaint, not specifically complaints against government administration, and so do not have the expertise necessary to investigate in any administrative field. They have no specific legal power to investigate as the ombudsman

does, and so, because of administrative secrecy, often cannot get at the relevant information in a case. In general, their coverage of the total need is spotty, to say the least. If they happen to take an interest in a case, they may have success, but one cannot be sure that they will deal thoroughly even with the complaints they do receive.

Turning to the courts as an avenue for administrative complaints presents even bigger problems for the average citizen. The power of the courts to review administrative decisions is very limited — mainly to reviewing the fairness of the decision rather than the content. And courts are costly: only the well-off can really afford to make appeals to the courts. Courts are also slow, cumbersome, and complicated, often using ancient prerogative writs and nearly always requiring the services of a lawyer. Because of these disabilities, we in the English-speaking world have been far too proud of our tradition of using the ordinary courts to protect the rule of law. The Europeans have been far ahead of us with their administrative courts and their laws on administrative procedure.

And now for some reminiscences and thoughts about the Canadian schemes. As a Canadian, I am proud to acknowledge that Alberta and New Brunswick were among the first jurisdictions in the English-speaking world to have an ombudsman. When Canada's biggest province, Ontario, adopted the ombudsman institution in 1975, that was a kind of landmark year, because Ontario has developed the biggest ombudsman operation in the world when measured by its staff, which numbers about 140, twice that of the federal ombudsman in Australia.

When British Columbia approved its ombudsman plan in 1977, this meant that all of the Canadian provinces had acquired an ombudsman within ten years, except for Prince Edward Island. P.E.I. is an understandable exception because it is so small. But the recent move by the government of Newfoundland to abolish the office is hard to understand. Indeed, in the light of the current revival of the concept in the United States and at the federal level in Canada, and of its world-wide acceptance as a necessary requirement for modern democratic government, this proposed abolition is incredible. The government's arguments that the office is too costly and that legislative members play the same role as ombudsmen were exploded long ago, as shown by the rapid world-wide spread of the institution. Clearly, the Wells government is proposing to take a large step backward.

I will conclude with a few comments about the federal level in Canada. The federal government has created five ombudsman-like

complaint agencies for particular purposes. The first one was the Commissioner of Official Languages, who has functions other than the straight ombudsman function of settling language complaints, such as promoting the use of the French language and initiating studies of language use in federal departments — a more proactive job than that of a typical ombudsman. The second one, and closer to the ombudsman concept, was the Correctional Investigator, who receives complaints from prisoners. But he is an executive officer appointed by the Solicitor General, not an independent officer of Parliament, although in my view he should be.

The next one to be created was the Privacy Commissioner, first appointed under the Canadian Human Rights Act of 1977, and then absorbed by the Access to Information and Privacy Act of 1982, which also provided for the fourth one, the Information Commissioner. The fifth one is the Public Complaints Commission for the RCMP, set up in 1988. But in this case the office receives and investigates directly only a portion of the complaints. Thus only three of the five offices can legitimately be called ombudsmen in the sense that they have all three essential feature of the ombudsman concept: being an office of Parliament, receiving all complaints directly, and not being able to make binding decisions. But the main problem is that, even taking all five together, they cover only a small fraction of the thousands of administrative decisions made each year at the federal level.

It is hard to understand why the federal government has not created an ombudsman scheme that covers the whole administrative system. Australia not only has an ombudsman in every state, but it has also had a federal ombudsman since 1975. Thus its federal plan has been in effect the same length of time as in Ontario. So it has had a lot of experience and is a valuable precedent for us to study.

The Australian federal office is the biggest ombudsman operation in the world in terms of the number of complaints it receives, about 30,000 per year. Yet it has a staff of only about 70, so it handles twice as many complaints as the Ontario Ombudsman with half the staff.

When I was in Australia recently, I kept asking the question, "How does the Commonwealth Ombudsman achieve this?" A main reason seems to be that the office was always on a starvation budget. The ombudsman simply had to find cheap ways to handle the vast number of complaints he received. A main way was to extend the use of the telephone. Elsewhere, quite a number of ombudsmen have used the

telephone as an improvement on the original Swedish model, which required complaints to be in writing. I believe it was the Hawaiian Ombudsman who first began using the telephone to receive complaints, and the next one may have been Keith Spicer when he was Canada's language commissioner. They began to allow complaints to come in by telephone from anywhere in the country. The innovation that the Australian Commonwealth ombudsman introduced was to use the telephone to settle complaints. In other words, he began dealing with the federal departments and agencies by telephone. Instead of trading documents back and forth or having to go over to a department to inspect documents, his staff do most of their work by phone and only create documentation for their files when absolutely necessary. I believe that this is the secret of how they can operate so cheaply. Of course, using the telephone is much faster, too, because they do not have to wait for the relevant documents to arrive or make a trip to the agency concerned. If plans are made here to emulate Australia's cheap, fast operation, the proposal for a federal ombudsman cannot be shot down with the argument that it will cost too much.

From my side trip to New Zealand I learned that New Zealand's ombudsman system enjoys tremendous respect. Having been in operation since 1962, it has developed a tradition of real independence and non-partisanship. New Zealand has two ombudsmen, one of whom is nominally the Chief Ombudsman, but they share their work and decide most cases independently. New Zealand, like Australia, has used its ombudsman office as an appeal body under its Freedom of Information Act, instead of creating special Information and Privacy Commissioners, as we have done at the federal level and in Ontario and Quebec. As a result, Australia and New Zealand have not had to face our problem of what to do about our specialized federal complaint offices when a general ombudsman plan is instituted.

I am optimistic enough to say "when" rather than "if" a federal plan is instituted, because of the current revival of the ombudsman idea. The Canadian Law Reform Commission recently recommended a federal ombudsman in one of their administrative law reports, and they are now working on a special report with detailed recommendations. Also, Beryl Gaffney, Liberal M.P. for Nepean, this year introduced a private member's Bill for an ombudsman (C–297), and has told me that after the reopening of Parliament this fall she will try to get a resolution from the Liberal party committing itself to the idea. My hope is that by the time of the next election the Mulroney government will be desperate enough for votes to commit itself to such a reform.

A difficult question that no doubt the Law Reform Commission is now puzzling over is what form the new institution should take. For a long time I have been pushing the idea for the federal level of what I call the collegial concept. Instead of a single ombudsman there would be a collegial body, an Ombudsman Commission, with a chief ombudsman in the chair. My latest effort in this direction was an article in *Policy Options* in 1982. What I proposed at that time was a commission, with the heads of most of the existing sectoral complaint offices being members. They would continue to perform their specialized functions, while the other members of the Commission would be ombudsmen who specialize in the various other areas of administration. This specialization would be one of the great advantages of the collegial scheme. Among the world's ombudsman systems there are many examples of multiple ombudsman schemes, including the original system in Sweden.

The closest parallel to my proposal is the system in Austria. Austria has a three-person board specializing in different aspects of administration. Each member is an ombudsman who has the power to make final recommendations on minor matters, but the three meet jointly as a board on serious cases. I believe that, at the federal level in Canada, this is the way to go, and I suspect that the Law Reform Commission is going to come up with a similar kind of recommendation. It will probably propose exempting the language commissioner from the Ombudsman Commission, because he has additional functions, but the other sectoral ombudsmen could easily be made part of it. The Commission would necessarily be larger than the one in Austria, and should be chaired by a Chief Ombudsman.

In any case, I hope it will not be too long before we have a general ombudsman system at the federal level, because Australia's experience with a federal ombudsman shows that every year there must be thousands of Canadian citizens who suffer from maladministration by our federal bureaucracy and for whom no remedy is ever found. A democracy should be ashamed of treating its citizens in this way.

APPENDIX C

THE OMBUDSMAN ACT

Short title

1 This Act may be cited as the *Ombudsman Act*. 1970–71, c.3, s.1.

Interpretation

2 In this Act,

(a) "agency" means an agency, board, commission, foundation or corporation established under an enactment that

(i) is appointed or has a majority of its members appointed by the Governor in Council, a member of the Executive Council or the Province, and

(ii) is supported by or directs the expenditure of public funds of the Province;

(b) "chief officer" includes a deputy minister, the head or chief executive officer of an agency, the mayor of a city or incorporated town, the warden of a municipality to which the *Municipal Act* applies and the head or chief executive officer of a municipal agency;

(c) "department" means a department of the Government of Nova Scotia and includes an agency;

(d) "House" means the House of Assembly;

(e) "minister" means the member of the Executive Council who presides over a department or who is in charge of or responsible for an agency;

(f) "municipal agency" means an agency, board, school board, commission, foundation, corporation, hospital or

a welfare, penal or other institution established by or on behalf of or controlled by a municipal unit or two or more municipal units;

(g) "municipal unit" means a municipality to which the *Municipal Act* applies, a city or an incorporated town, and includes a municipal agency;

(h) "officer" means any official, employee or member of a department or a municipal unit;

(i) "Ombudsman" means the Ombudsman appointed under this Act. 1970–71, c.3, s.2.

Ombudsman

3 (1) There is hereby established, as an officer of the House, a commissioner for investigations to be called the Ombudsman.

Appointment

(2) The Ombudsaman shall be appointed by the Governor in Council.

Eligibility for office

(3) The Ombudsman may not be a member of the House and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office without prior approval in each particular case by the House or by the Governor in Council when the House is not in session.

Salary

(4) The Ombudsman shall be paid such salary as is determined from time to time by the Governor in Council.

Oath of office

(5) Before entering upon the exercise of the duties of his office the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

Administration of oath

(6) The Speaker or the Chief Clerk of the House shall administer the oath referred to in subsection (5).

Costs and expenses

(7) The costs and expenses incurred by the Ombudsman or in the administration of the Act may be paid from the Consolidated Fund of the Province. 1970–71, c.3, s.3; 1974, c.48, s.1.

Term of office and re-appointment

4 (1) Unless his office sooner becomes vacant, the Ombudsman is to hold office for five years from the date of his appointment under Section 3 and, if otherwise qualified, is eligible to be re-appointed.

Resignation

(2) The Ombudsman may resign his office by notice in writing addressed to the Speaker of the House or, if there is no Speaker or if the Speaker is absent from the Province, to the Chief Clerk of the House. 1970–71, c.3, s.4.

Removal or suspension by Governor in Council

5 (1) On the recommendation of the House, the Governor in Council may remove or suspend the Ombudsman from his office for cause or incapacity.

Suspension by judge

(2) When the House is not in session, a judge of the Trial Division of the Supreme Court may suspend the Ombudsman from his office for cause or incapacity upon an application by the Governor in Council.

Practice and procedure

(3) Where the Governor in Council makes an application under subsection (2), the practice and procedure of the Supreme Court shall apply *mutatis mutandis* to the application.

Acting Ombudsman and tabling of report

(4) Where a judge of the Trial Division of the Supreme Court suspends the Ombudsman under subsection (2) that judge shall

(a) request the Governor in Council to appoint a person as an acting Ombudsman to hold office until the suspension has been dealt with by the House; and

(b) table a report of the suspension within ten days following the commencement of the next ensuing session of the House.

Duration of suspension

(5) A suspension under subsection (2) is not to continue beyond the end of the next ensuing session of the House. 1970–71, c.3, s.5.

Extent of disclosure in report of Ombudsman

6 Notwithstanding subsection (5) of Section 3, the Ombudsman may disclose in a report made by him under this Act any matters which, in his opinion, are necessary to disclose in order to establish grounds for his conclusions and recommendations. 1970–71, c.3, s.6.

Personnel

7 (1) The Ombudsman may, subject to the approval of the Governor in Council, appoint such assistants and employees as he deems necessary for the efficient carrying out of his functions under this Act.

Oath

(2) Before performing any official duty under this Act a person appointed under subsection (1) shall take an oath to be administered by the Ombudsman, that he will not divulge any information received by him under this Act, except for the purpose of giving effect to this Act. 1970–71, c.3, s.7.

Delegation of powers

8 (1) The Ombudsman, by writing under his signature, may delegate to a person appointed an assistant under subsection (1) of Section 7 any of his powers under this Act except the power of delegation and the power to make a report under this Act.

Duty to produce evidence of delegation

(2) A person purporting to excercise power of the Ombudsman by virtue of a delegation under subsection (1) shall produce evidence of his authority to exercise that power when required to do so. 1970–71, c.3, s.8.

Ombudsman as commissioner

9 For the purpose of this Act, the Ombudsman is a commissioner under the *Public Inquiries Act*. 1970–71, c.3, s.9

Act does not apply

10 This Act does not apply

(a) to judges and justices or to the functions of any court of the Province; and

(b) to deliberations and proceedings of the Executive Council or any committee thereof. 1970-71, c.3, s.10.

Investigation of complaint

11 (1) Subject to subsection (2), where any person is aggrieved or, in the opinion of the Ombudsman, may be aggrieved, the Ombudsman, on the written complaint of or on behalf of the person aggrieved or on his own motion, may investigate the administration

(a) by a department or an officer thereof, of any law of the Province;

(b) by a municipal unit or an officer thereof, of any law of the municipal unit or any law of the Province that applies to the municipal unit.

Matters not to be investigated

(2) Notwithstanding subsection (1), the Ombudsman shall not investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act, whether or not that right of appeal or objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired; or

(b) any decision, recommendation, act or omission of any person acting as a solicitor or prosecuting

office for the Crown or acting as council for the Crown in relation to any proceeding.

Determination of jurisdiction

(3) Where a question arises as to the jurisdiction of the Ombudsman to investigate a grievance under this Act, he may apply to the Appeal Division of the Supreme Court for a determination of the question of his jurisdiction. 1970-71, c.3, s.11.

Application for investigation

12 (1) Subject to the provisions of this Act, a person may apply by written complaint to the Ombudsman to investigate a grievance.

Referral by committee of House

(2) Notwithstanding Sections 14, 20 and 21, a committee of the House may refer any petition that is before the committee for consideration or any matter relating to such petition to the Ombudsman for investigation and report.

Investigation and report to committee

(3) Notwithstanding Sections 14, 20 and 21, where a matter has been referred to the Ombudsman under subsection (2), the Ombudsman, subject to any special directions of the committee, shall investigate the matter as far as it is within his jurisdiction and shall make such report to the committee as he thinks fit.

Letter from person in custody or mental patient

(4) Notwithstanding any Act, where a letter written by a person in custody on a charge or after conviction of any offence or by any inmate or patient of any offence or by any inmate or patient of any sanatorium or mental

hospital is addressed to the Ombudsman, it shall be forwarded immediately, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate or patient. 1970-71, c.3, s.12.

Statutory prohibitions inapplicable

13 Notwithstanding any other Act providing that a decision, recommendation, act or omission is final or that no appeal lies in respect thereof or that no proceeding, decision, recommendation, act or omission of a department or municipal unit or officer thereof is to be challenged, reviewed, quashed or called in question, the Ombudsman may exercise the powers under this Act. 1970-71, c.3, s.13.

Refusal or cessation of investigation

14 (1) The Ombudsman, in his discretion, may refuse to investigate or may cease to investigate a grievance if

(a) an adequate remedy or right of appeal already exists whether or not the complainant has availed himself of the remedy or right of appeal;

(b) the grievance is trivial, frivolous, vexatious or not made in good faith;

(c) having regard to all the circumstances of the case, further investigation is unnecessary;

(d) the grievance relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before complaining;

(e) the complainant does not have a sufficeint personal interest in the subject-matter of the grievance; or

(f) upon a balance of convenience between the public interest and the person aggrieved the Ombudsman is of the opinion that the grievance should not be investigated.

Notification of refusal or cessation

(2) Where the Ombudsman decides not to investigate or to cease to investigate a grievance he shall inform the complainant and any other interested person of his decision and may state his reasons therefor. 1970-71, c.3, s.14.

Notification of investigation

15 Where the Ombudsman intends to investigate a grievance under this Act, he shall

(a) in the case of a grievance relating to a department, notify the minister and the chief officer of the department;

(b) in the case of a grievance relating to a municipal unit, notify the chief officer of the municipal unit. 1970-71, c.3, s.15.

Investigation in private

16 (1) Every investigation under this Act is to be conducted in private.

Hearing and making inquiries

(2) Subject to this Act, the Ombudsman may hear or obtain information from any person and may make inquiries.

Restriction on right to be heard

(3) The Ombudsman may hold hearings under this Act but, subject to subsections (4) and (5), no person is entitled as of right to be heard by the Ombudsman.

Hearing required

(4) Where during an investigation the Ombudsman is satisfied that there is *prima facie* evidence that

(a) a department or officer thereof administered a law of the Province;

(b) a municipal unit or officer thereof administered a law of the municipal unit or any law of the Province that applies to the municipal unit,

so as to cause a grievance or to give cause for a grievance, he shall so advise the minister and the chief officer of the department or the chief officer of the municipal unit, as the case may be, and the officer causing the grievance and give each an opportunity to be heard.

Right to counsel

(5) Where a minister, a chief officer or officer thereof appears at a hearing under subsection (4) the minister, chief officer or officer, as the case may be, is entitled to counsel.

Consultation permitted

(6) The Ombudsman may at any time during or after an investigation consult a minister or chief officer of a department or a municipal unit concerned in the matter of the investigation.

Consultation required

(7) Before forming a final opinion on any matter referred to in subsection (1) of Section 20, the Ombudsman shall consult with

(a) the minister, when the investigation relates to a department, a recommendation to the minister or when the minister requests; or

(b) the chief officer of the municipal unit when the investigation relates to a municipal unit.

Referral by Ombudsman

(8) Where during or after an investigation the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct by a department or municipal unit or officer thereof, he shall refer the matter to the minister and chief officer of the department or the chief officer of the municipal unit.

Procedure

(9) Subject to this Act and any rules made under Section 25, the Ombudsman may regulate his procedure. 1970-71, c.3, s.16.

Duty to furnish information

17 (1) Subject to subsections (2), (3), (4), (5), (6) and (7) and Section 18, where the Ombudsman requests a person who, in the opinion of the Ombudsman, is able to furnish information relating to a matter being investigated by the Ombudsman to furnish such information, that person shall furnish that information and produce any documents or papers that, in the opinion of the Ombudsman, relate to the matter and that may be in the possession or under the control of that person whether or not that person is an officer of a department or municipal unit, and whether or not the documents and papers are in the custody or under the control of that department or municipal unit.

Summons and examination of witness

(2) The Ombudsman may summon before him and examine on oath

(a) any officer of a department or municipal unit who, in his opinion, is able to give any information referred to in subsection (1);

(b) any complainant; and

(c) with the approval of the Attorney General, any other person who, in the opinion of the Ombudsman, is able to give any information referred to in subsection (1).

Administration of oath

(3) The oath referred to in subsection (2) is to be administered by the Ombudsman.

Privileged information

(4) Subject to subsection (5), where a person is bound by any law or by an enactment to maintain secrecy in relation to, or not to disclose any matter, the Ombudsman shall not require that person to supply any information or to anwer any question in relation to that matter or to produce any document or paper relating to the matter which would be in breach of the obligation of secrecy or non-disclosure.

Consent to release certain privileged information

(5) With the prior consent in writing of the complainant the Ombudsman may require a person to whom subsection (4) applies to supply information or answer questions or produce documents or papers relating only to the complainant and that person shall do so.

Rules of evidence

(6) The rules for taking evidence in the Supreme Court apply to evidence given by a person required to give information, answer questions and produce documents or papers under this Act.

Witness fees and expenses

(7) Any person required to attend a hearing under this Act is entitled to the same fees, allowance and expenses as if he were a witness in the Supreme Court.

Evidence to Ombudsman inadmissible in court

(8) Except on the trial of a person for perjury, evidence given by any person in proceedings before the Ombudsman and evidence of any proceeding before the Ombudsman is not admissible against any person in any court or in any proceedings of a judicial nature.

No liability for compliance

(9) No person is liable for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this Act. 1970–71, c.3, s.17.

Protection of Executive Council

18 (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper may disclose

(a) deliberations of the Executive Council; or

(b) activities of the Executive Council or any member of the Executive Council relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or the document or paper produced.

Information injurious to public interest

(2) Subject to subsection (1), a rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question on the ground that the disclosure of the document, paper or thing, or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman. 1970–71, c.3, s.18.

Right of entry and investigation

19 (1) For the purposes of this Act, the Ombudsman may enter upon any premises occupied by any department or municipal unit and, subject to Sections 17 and 18, carry out any investigation within his jurisdiction.

Notice of intent to enter

(2) Before entering any premises under subsection (1) the Ombudsman shall notify the chief officer of the department or municipal unit of his intention to enter the premises. 1970–71, c.3, s.19.

Report of Ombudsman if grievance established

20 (1) Where upon investigation the Ombudsman is of the opinion that a grievance exists or may exist because a department or municipal unit or officer thereof administered or is administering a law of the Province or a law of the municipal unit or a law of the Province that applies to the municipal unit

(a) unreasonably, unjustly, oppressively or in a discriminatory manner, or pursuant to a rule of law, enactment or practice that so results;

(b) under mistake of law or fact, in whole or in part;

(c) wrongly;

(d) contrary to law; or

(e) by using a discretionary power for an improper purpose, or on irrelevant grounds, or by taking irrelevant considerations into account, or by failing to give reasons for the use of a discretionary power when reasons should have been given,

and if the Ombudsman is of the opinion that

(f) the grievance should be referred to the department or municipal unit or officer thereof for further consideration;

(g) an omission should be rectified;

(h) a decision should be cancelled or rectified;

(i) a practice by reason of which the grievance arouse or may arise should be altered;

(j) a law by reason of which the grievance arouse or may arise should be reconsidered;

(k) reasons should be given for the use of a discretionary power; or

(l) other steps should be taken as he may advise,

the Ombudsman shall report his opinion, his reasons therefor and any recommendation to the minister and the chief officer of the department or the chief officer of the municipal unit concerned.

Notice of implementation of recommendation

(2) Where the Ombudsman makes a recommendation under subsection (1) he may request the department or municipal unit to notify him within a specified time of the steps it proposes to take to give effect to his recommendations.

Report where recommendation not implemented

(3) Where, after the time stated under subsection (2), the department or municipal unit does not act upon the recommendation of the Ombudsman, refuses to act thereon or acts in a manner unsatisfactory to the Ombudsman, the Ombudsman may send a copy of his report and recommendation to the Governor in Council, in the case of a department, or the council of the

municipal unit, in the case of a municipal unit, and may thereafter make a report to the House.

Included in report

(4) The Ombudsman shall include with any report made under subsection (3) a copy of any comment made by the department or municipal unit upon his opinion or recommendation.

Hearing required for person adversely affected

(5) In any report made by him under this Act the Ombudsman shall not make any finding or comment that is adverse to any person unless he gives that person an opportunity to be heard. 1970–71, c.3, s.20.

Duty to inform complainant

21 (1) Where the Ombudsman makes a recommendation under subsection (1) of Section 20 and the department or municipal unit does not act upon such recommendation to his satisfaction, the Ombudsman shall inform the complainant of his recommendation and may add any comment.

Further duty to inform complainant

(2) The Ombudsman shall in any case inform the complainant in the manner and time he deems proper of the result of the investigation. 1970–71, c.3, s.21.

Review of decision of Ombudsman

22 No proceeding of the Ombudsman is void for want of form and, except on the ground of lack of jurisdiction, no proceedings or decisions of the Ombudsman are to be challenged, reviewed, quashed or called in question in any court. 1970–71, c.3, s.22.

No liability of Ombudsman or personnel

23 (1) No proceedings lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman for any thing he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown he acted in bad faith.

Not compellable witness

(2) The Ombudsman and any person holding any office or appointment under the Ombudsman shall not be called to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act. 1970–71, c.3, s.23.

Annual report

24 (1) The Ombudsman shall report annually to the House on the exercise of his functions under this Act.

Publication of general report

(2) The Ombudsman, in the public interest or in the interests of a person, department or municipal unit, may publish reports relating generally to the exercise of his functions under this Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of a report made to the House under this Act. 1970–71, c.3, s.25.

Offences and penalties

26 Every person who

(a) without lawful justification or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his functions under this Act;

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirements of the Ombudsman or any other person under this Act;

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his functions under this Act; or

(d) refuses or wilfully fails to comply with subsection (4) of Section 12.

is guilty of an offence and on summary conviction is liable to a penalty not exceeding five hundred dollars. 1970–71, c.3, s.26.

Existing right or remedy preserved

27 This Act does not affect, abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any substantive or procedural right or remedy existing elsewhere or otherwise than in this Act. 1970–71, c.3, s.27.